

# ILLINOIS HEALTH FACILITIES PLANNING BOARD RESPONSE TO PUBLIC COMMENT

**THE HEALTH FACILITIES PLANNING BOARD  
MARCH 15, 2006**

**IHFPB Responses to Public Comment  
PROPOSED RULES: Amendments to Part 1130  
(and Repeal of Parts 1140, 1180 and 1190)**



## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: **1130.140 – DEFINITIONS - (APPLICANT)**

#### COMMENTATOR/ORGANIZATION:

#### COMMENTS:

Greg Bratcher  
BJC Healthcare

**Applicant** - The commentator states that the proposed definition of “applicant” has become more complex than necessary.

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

**Applicant** – The words “as defined in the” should be deleted

#### RESPONSE:

An amendment is proposed to accept the recommended change.

“**Applicant**” is not defined in the Act. Applicant means one or more persons who apply...” “Person” is defined in the Act.

Rule Number/Title: **1130.140 – DEFINITIONS - (COMPLETION DATE)**

#### COMMENTATOR/ORGANIZATION:

#### COMMENTS:

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

**Completion Date or Project Completion Date** – should be written to recognize that the completion date may also be determined by agreement between the applicant and the IHFPB.

#### RESPONSE:

“**Completion Date**”- An amendment is proposed to restore the existing language. Will include: “completion date”; and components necessary to reach completion.

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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.140 – DEFINITIONS - (CONTROL)</b>	
<b>COMMENTATOR/ORGANIZATION:</b> Greg Bratcher BJC Healthcare	<b>COMMENTS:</b> <b>Control</b> – Mr. Bratcher questions the use of the terms “control” and “related persons” to determine “applicants”, since he did not find these 2 terms in the Act. He suggests limiting the definition of “applicant” to the licensed facility alone, when applicable, to simplify the application process, reduce paperwork and coordinate efforts with Licensure.
<b>RESPONSE:</b> Both the term “control” and the term “related persons” are referenced in the Act. (“Related person” means any person that: (i) is at least 50% owned, directly or indirectly, by either the health care facility or a person owning, directly or indirectly, at least 50% of the health care facility; or (ii) owns, directly or indirectly, at least 50% of the health care facility. (20 ILCS 3960/3) (from Ch. 111 1/2, par. 1153) and “control” is discussed in the definition of “change of ownership of a healthcare facility”. [20 ILCS 3960/3]  Suggestion to change the requirements will be referred to future rule development efforts.	

Rule Number/Title: <b>1130.140 – DEFINITIONS - (ENTITY)</b>	
<b>COMMENTATOR/ORGANIZATION:</b> Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	<b>COMMENTS:</b> <b>Entity</b> – the State should not be excluded from the definition of “Entity.”
<b>RESPONSE:</b> An amendment is proposed to incorporate the recommendation.	

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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.140 – DEFINITIONS - (IMPENDING)</b>	
<b>COMMENTATOR/ORGANIZATION:</b>	<b>COMMENTS:</b>
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	<b>Impending</b> – “It is an over-complicated way of dealing with concerns about ex parte communications. “
Ralph Weber VP, Community Outreach Northwestern Memorial Hospital	<b>Pending and Impending</b> - The two terms are unclear. Mr. Weber states that one of the terms should be eliminated to avoid confusion.
<b>RESPONSE:</b>	
The terms “impending” and “pending” applications are used in the Act. Proposed rule changes are intended to operationalize those terms.	

Rule Number/Title: <b>1130.140 – DEFINITIONS - (MODIFICATION)</b>	
<b>COMMENTATOR/ORGANIZATION:</b>	<b>COMMENTS:</b>
Jacob M. Axel/Axel & Assoc	<b>“Modification”</b> -A change in the method of financing should not constitute a modification, since most applicants would not elect to change to a more expensive form of financing.
Patricia Sweitzer for Edward Hospital	The addition of “the timing” to changes to the application that represent a <b>modification</b> should be clarified. Modifications pertain to projects in the review process, prior to Board action. As such, a change in the timing is not relevant to the “need” or cost of a project. Without a clear understanding of the intent and justification, this proposed addition should be eliminated.
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	<b>Modification of an Application or Modification</b> –“ Modification of an application is a significant change. Timing is not. These rules should not be crafted to micro-manage projects.”

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#### RESPONSE:

The definition of “Modification” exists to acknowledge that a CON application may be changed after submission for review. It identifies the key components of the application which may be changed by the applicant. New language includes a time factor as a key element of an application.

An amendment is proposed to further clarify and address concerns raised in the comments.

Rule Number/Title: **1130.140 – DEFINITIONS - (OBLIGATION)**

#### COMMENTATOR/ORGANIZATION:

#### COMMENTS:

John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	<b>Obligation</b> definition “...is very helpful. The previous definition was unclear.”
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	<b>Obligation</b> –“ It can be a problem for applicants with larger projects to have to commit 33% of the capital expenditure in order to obligate the project. Obligation should be relevant to the project type, and as such, there should be multiple options for determining obligation. If the purpose of the definition is to assess compliance with the statutory requirement that projects be obligated within either 12 or 18 months, I would suggest that the current requirement is sufficient. “
Ralph Weber VP, Community Outreach Northwestern Memorial Hospital	<b>Obligation</b> – The proposed definition gives the impression that a project cannot be obligated until 33% of the total project cost is expended or committed, which could be a problem for very large projects, since it would require the commitment of tens of millions of dollars within a relatively short period of time. (18 months from the permit date for large projects).  Mr. Weber recommends continuing the allowance for applicants to sign contracts with contractors, subject to CON review and approval, since it gets the processing of paper underway. Would like to continue to do this since it streamlines the construction projects. He suggests this practice “would not work well with a 33% limit.”

#### RESPONSES:

The intent was to provide a definitive definition of obligation, to replace the existing definition. The proposed definition represents the maximum point for the

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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

definition of obligation; one could obligate in four months of obligation, if you expend one dollar.

Once the dollar commitment exceeds 33% of the total project cost without obligating the project, or if the project has not been obligated within the prescribed time frames (12 months or 18 months, depending upon project type), the permit holder must request an extension.

An amendment is proposed to change the one time extension from 90 days to one year.

Rule Number/Title: **1130.140 – DEFINITIONS - (PROJECT OBLIGATION DATE)**

#### COMMENTATOR/ORGANIZATION:

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

#### COMMENTS:

**Project Obligation Date** – “As an alternative to your proposed definition, I would suggest the following: “Project Obligation Date” means the date on which the permit holder initiated or commenced the project.  
If there is a concern about whether the statutory time frames have been met, then the permit holder can be asked to demonstrate compliance.”

#### RESPONSE:

The “Project Obligation Date” means the date the project has either expended or committed up to 33% of the approved total project cost. This correlates with the proposed definition of “Obligation.” The commentator’s suggested definition of the “Project Obligation Date” does not correspond with the proposed definition for “Obligation”.

Rule Number/Title: **1130.140 – DEFINITIONS - (SUBSTANTIALLY CHANGES THE BED COUNT OF A HEALTHCARE FACILITY)**

#### COMMENTATOR/ORGANIZATION:

Philip L.Schaefer  
Southern Illinois Healthcare

#### COMMENTS:

The definition of “**substantially changes the bed count of a healthcare facility**” should be reviewed. Recommend changing the 10 bed/10% rule to 20 beds/20% to offer greater flexibility in matching capacity w/increased demand on a more timely basis.  
Also wants clarification of requirements for decreasing bed count and the inventory of beds.

#### RESPONSE:



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This definition is statutory. Since it is not part of a rule definition, it cannot be altered through this rule revision process.

Rule Number/Title: **1130.140 – DEFINITIONS - (SUBSTANTIALLY CHANGES THE SCOPE OR CHANGES THE FUNCTIONAL OPERATION OF THE (FACILITY))**

**COMMENTATOR/ORGANIZATION:**

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

**COMMENTS:**

**Substantially Changes the Scope or Changes the Functional Operation of the Facility** –“ An “and” has been included to link elements of the list. This should be an “or.”

**RESPONSE:**

An amendment is proposed to incorporate the recommended change.

Rule Number/Title: **1130.140 – DEFINITIONS - (TECHNICAL ASSISTANCE)**

**COMMENTATOR/ORGANIZATION:**

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

**COMMENTS:**

**Technical Assistance** –Suggests the following definition as a starting point for your consideration:  
“Technical Assistance” means help with respect to an application, not intended to influence any decision on the application. Technical assistance may be provided by an employee of the HFPB or IDPH to a person or health care facility, and is not considered an ex parte communication as defined in Section 4.2 of the Act. Technical Assistance may be provided about and through pre-application conferences, regarding required filings, about the interpretation or application of the State Board’s review criteria, and on the **completion** of its application forms. It may also include clarification of information provided relative to a submitted application and agency findings made in the State

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	Agency Report. <i>Any assistance shall be documented in writing by the applicant and employees within 10 business days after the assistance is provided</i>
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### RESPONSE:

An amendment is proposed to incorporate the recommended changes to further clarify “Technical Assistance”.
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Rule Number/Title: <b>1130.140 – DEFINITIONS - (10% RULE)</b>	
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### COMMENTATOR/ORGANIZATION:

### COMMENTS:

Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	1. <b>10% Rule</b> – Since this is a term of art, I would not include a definition, but repeat the statutory language that it refers to in the section on bed changes. Suggests repeating the statutory language that references the 10% rule in the section on bed changes
Delia M. Wozniak President DMW and Associates, Inc.	2. Dialysis Stations are not mentioned in this section. Do the proposed rules exclude dialysis facilities from using the <b>10% rule</b> ? Please clarify.

### RESPONSE:

1. An amendment is proposed to delete the subject definition to avoid confusion.
2. The “10% rule” is statutory language regarding permit requirements for beds. It pertains only to bed services. However, 3 or less dialysis stations can be added to an existing facility through the exemption process.

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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title:	<b>1130.220 - NECESSARY PARTIES TO THE APPLICATION FOR PERMIT OR EXEMPTION</b>
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COMMENTATOR/ORGANIZATION:	COMMENTS:
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	The application could be simplified for licensed entities by simply requiring the licensed entity or the entity that will hold the license to be the applicant. If the Board is interested in corporate structures, an organizational chart can certainly be required as part of the application.
Greg Bratcher BJC Healthcare	The commentator recommends accepting the licensure of an applicant as proof of the applicant's qualifications, background, character and financial resources to adequately provide a proper service to the community, as required by the Act. "Being licensed in Illinois as a safeguard for the things that concern CON."
Clare Connor Ranalli Attorney at Law Hinshaw & Culbertson LLP for Fresenius Medical Care of Illinois	Ms. Ranalli : -Cites difficulties in determining who has final control of an applicant. -Suggests changing the requirement for a certificate of good standing in the State in which the applicant conducts business, to referencing "jurisdictions", since some applicants are foreign corporations. -Is concerned that the definition of "control" together with "final control" creates confusion regarding the identification of co-applicants. -Is concerned w/the reference to an entity that is a lessee or sub lessee being included as a co-applicant or necessary party to an applicant.

#### RESPONSE:

No proposed amendments to this rule have been made. Suggestion to change the requirements will be referred to future rule development efforts.

Rule Number/Title:	<b>1130.230 - FEES</b>
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COMMENTATOR/ORGANIZATION:	COMMENTS:
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John R. Beberman Director of Capital Budget and Control University of Chicago Hospital	Suggest an annual report presenting total fee revenue, expenditures and balance. This report should be used to decide if the fee rates are too low or too high.
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	Suggests changing the deadline for submitting the fee balance from 30 days to 60 days, to allow sufficient time for check processing.

#### RESPONSE:

IHFPB already prepares an annual report concerning the program's revenues, expenditures and balance.

Since most applicants are aware that a processing fee is due, the party responsible for issuing checks can be advised prior to application submission, that a deposit and a balance will be due within a certain time frame. The checks can then be processed in a timely manner.

#### Rule Number/Title: **1130.240 - REPORTING AND NOTIFICATION REQUIREMENTS**

##### COMMENTATOR/ORGANIZATION:

##### COMMENTS:

John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	1. f) Changes in Bed Capacity - "There should be no restriction of once every 2 yrs for exercising the 10 bed/10% allowance. The Act doesn't indicate this restriction. Continuing to allow a rolling limit is an important convenience for hospitals to make minor adjustments in their licensed bed counts."
Margie Zeglen Director of Planning Palos Community Hospital	2. Recommends that "the new notification for reductions in hospital services by 50% or more should be clarified to reflect the intent of the statutory language and be consistent with other Planning Board rules for all types of projects, bed related as well as category of service." "...the wording of the rule should reflect the differentiation between those categories of service characterized by physical capacity versus service availability."

#### RESPONSE:

- The language referencing "once every 2 years" is statutory [20 ILCS 3690/5 (c)] Beds needed beyond the 10 bed/10% allowance can be added (if there is a proven need), through the CON process. The purpose of the CON process is to avoid unnecessary duplication of services and to approve the addition of beds with proven need- need of the community, not just the needs of individual facilities.
- The proposed rule differentiates between bed services and non-bed services and indicates the acceptable types of measurements for both categories. Reporting requirement is stated in the Act.

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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.310 - PROJECTS OR TRANSACTIONS SUBJECT TO THE ACT</b>	
COMMENTATOR/ORGANIZATION:	COMMENTS:
John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	b)2) Components of a Project or Transaction – “Components financed through a single debt instrument may be separate and distinct and should not be forced into the scope of a reviewable project. There is no special unifying principal of a debt instrument other than the method of financing.”
Armand J. Andreoni Director, Department of Planning Loyola University Hospital	“Components of a Transaction” is too broad and encompassing with regard to the issuance of debt instruments. Under this proposed rule change, divergent and unrelated projects would be considered linked only because they are funded out of the same debt issuance. These are in their nature, considered routine and would not be programmatically or architecturally related.
Patricia Sweitzer for Edward Hospital	b)Components of a Project or Transaction “It is common and prudent practice to group many capital expenditures into one bond issue. Such components are bound by bond issuance only and are not connected in any other way. Such components should not be considered part of “a project” for review.”
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	Subsection (b)(2) requires that projects that are undertaken under a single construction contract or are to be financed through a single debt instrument must be grouped together and are subject to review. This subsection should be deleted. Because two projects are financed together, this does not necessarily mean that they are related.
Scott Powder VP, Strategic Planning and Growth Advocate Healthcare	Because two projects are financed together, this does not necessarily mean that they are related. Advocate encourages the Board to remove this financing parameter as a criterion for determining project interdependence.
<b>RESPONSE:</b>	
No substantive changes to this existing rule were proposed. Suggestion to change the language will be referred to future rule development efforts.	

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.410 - PROJECTS OR TRANSACTIONS ELIGIBLE FOR EXEMPTION FROM PERMIT REQUIREMENTS</b>
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COMMENTATOR/ORGANIZATION:	COMMENTS:
Patricia Sweitzer for Edward Hospital Section 1130.410 d	This exemption only applies to facilities on the same site, under the same ownership, w/no changes in scope of services. There is no need to eliminate this exemption.
Delia M. Wozniak President DMW and Associates, Inc.	Consider transferring a non-material name change of a health care facility from a COE requirement to a reporting and notification requirement in Sec.1130.240.

#### RESPONSE:

An amendment is proposed to restore the existing language in Section 1130.410 d) and Section 1130.541 .

Rule Number/Title: <b>1130.500 - GENERAL REQUIREMENTS FOR EXEMPTIONS</b>
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COMMENTATOR/ORGANIZATION:	COMMENTS:
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	<ol style="list-style-type: none"> <li><b>1.</b> Requiring 90-day advance notice will hinder transactions, many of which are already quite complex. The letter of intent process does nothing to change the prohibition on ex parte communications.</li> <li><b>2.</b> Subsection (c) - One of the requirements proposed is that the applicant must verify that all compliance requirements with existing permits have been fulfilled. This requirement may have unintended consequences.                          “If the exemption is for a change of ownership, the rules already require certification that there has been no serious adverse action against the applicant. This is the appropriate standard by which an exemption should be denied.”</li> </ol>
Terence P. Sullivan Illinois Council on Long Term Care	<b>3. (a)(1) – Letter of Intent:</b> The commentators view the proposed 90-day Letter of Intent time frame as an unnecessary delay for nursing home changes

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<p>William Kempiners Illinois Health Care Association</p> <p>Dennis Bozzi Life Services of Illinois</p>	<p>of ownership, since these projects are uncomplicated. Suggest differentiating the rule so that LTCs would submit a LOI 30 days prior to application submission. Other applicants would have the proposed 90-day time frame.</p> <p><b>4. ©(5) and (6) – Organizational Structure; and Fair Market Value:</b> The commentators suggest that these rules pertain only to hospital applicants, since these requirements are atypical of nursing homes.</p>
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#### RESPONSE:

<p>1. The Letter of Intent requirement has no impact on the time frame for the review time frame. The review process starts after the application has been submitted and deemed complete. A Letter of Intent, which requires only the most basic information points, can be submitted while the preparation of an application is in the process of being reviewed and finalized by the applicant.</p> <p>2. This requirement is not used to determine the approval or denial of an Exemption application. Rather, it is used to determine the applicant's eligibility to an Exemption review. If an applicant cannot meet the criteria for an Exemption, the rules have an alternative application process..</p> <p>3. An amendment is proposed to change the LOI requirement for Exemptions from 90 days to 30 days.</p> <p>4. If the rule is not applicable to a specific application, the information will not be required.</p>
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Rule Number/Title: **1130.510 - REQUIREMENTS FOR EXEMPTIONS INVOLVING THE ACQUISITION OF MAJOR MEDICAL EQUIPMENT**

#### COMMENTATOR/ORGANIZATION:

<p>Ann Guild VP, Health Policy and Regulation Illinois Hospital Association</p>	<p><b>COMMENTS:</b></p> <p>The commentator:</p> <ul style="list-style-type: none"> <li>-States that the reason for changing the project completion time from 24 months to 12 is unclear; and</li> <li>-Indicates this might be a problem since final cost reports can be delayed for a number of reasons; and</li> <li>-further states that the chairman should be allowed to grant an extension for up to an additional 12 months, if the proposed reduction is of importance.</li> </ul>
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#### RESPONSE:

<p>An amendment is proposed to restore the original language in Section 1130.510b)7).</p>
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## PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

The suggestion regarding extension of project completion time is already addressed in the Chairman review of renewals. See Section 1130. 740(e)

### Rule Number/Title: **1130.520 - REQUIREMENTS FOR EXEMPTIONS INVOLVING THE CHANGE OF OWNERSHIP OF A HEALTH CARE FACILITY**

COMMENTATOR/ORGANIZATION:	COMMENTS:
<p>Ann Guild VP, Health Policy and Regulation Illinois Hospital Association</p>	<p><b>1.</b> “Subsections (b)(4) and (b)(5) add new requirements that applicants should have to demonstrate that they have sufficient funds to operate the facility for three years. Applicants must also verify that they intend to maintain ownership and control of the acquired facility for three years.</p> <p>Ms. Guild :</p> <p>a. questions the necessity of this new requirement and whether the intent is to:</p> <ul style="list-style-type: none"> <li>-delay a change of ownership prior to the three year deadline if the current owner has had financial or other difficulties that could lead to problems at the facility; or</li> <li>-temporarily block changes of ownership that are really re-organizations within a corporation; or</li> <li>-block changes of ownership for any reason.</li> </ul> <p>b. questions the authority of HFPB to propose these revisions.</p> <p>c. recommends :</p> <ul style="list-style-type: none"> <li>-Subsection (b)(4) be revised to read: <u>proof that the applicant has sufficient funds to finance the acquisition</u>; and</li> <li>-Subsection (b)(5) should be deleted; and</li> </ul> <p><b>2.</b> Questions the proposed time frame change for completing a change of ownership transaction from 24 months to 12 months, since a complex transaction may take longer than 12 months to complete.</p>
<p>Terence P. Sullivan Illinois Council on Long Term Care</p> <p>William Kempiners Illinois Health Care Association</p>	<p><b>3.</b> (b)(4) Since nursing homes do not generally have bond ratings, the requirements for bond ratings is unrealistic. The Nursing Home Care Act and IDPH’s nursing home regulations require cash flow for 60 days of operation. 3 yrs of financing is unrealistic for nursing homes.</p> <p>Also, the commentators state that 3-year verification of ownership is unrealistic</p>



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### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Dennis Bozzi Life Services of Illinois	for nursing homes. Therefore, it is suggested that these requirements are for hospitals only.  <b>4.</b> 1130.520(e)-Application Processing Fee – Recommend the fee is \$2,500 for hospitals and \$1,000 for nursing homes (since they are less complicated and time consuming to review)
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#### RESPONSE:

1. The subject standards are identical to those for full CON permit. It is equally important that applicants for exemption meet these requirements. The main difference between projects for exemption and those for full CON permit is that those eligible for exemption review are usually less complicated, thereby requiring less time to review. The streamlined review process in no way suggests that the applicant's background and financial viability are less important in projects for exemption, than in those that require a full CON permit.
2. A change of ownership transaction is usually considered eligible for an "Exemption" review, since this type of project is normally not complicated. The purpose of an "Exemption" review process is to provide an expedited review for uncomplicated projects. This would include the time frame for completion.
3. Suggestion to change the requirements will be referred to future rule development efforts.
4. The fee was set at \$2,500 to reflect the increase in cost to IDPH for public notification and conducting public hearings. The responsibility of the public hearings was previously the applicant's, but will now revert to IDPH. This cost for notification and conducting public hearings would be the same for a hospital or nursing home; therefore, there is no differentiation in fees assessed.

Rule Number/Title: <b>1130.544 - CERTIFICATES OF EXEMPTION FOR THE ADDITION OF STATIONS</b>
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#### COMMENTATOR/ORGANIZATION:

Delia M. Wozniak  
President  
DMW and Associates, Inc.

#### COMMENTS:

When should final cost reports be filed for COEs? 60 days (Section 1130.544.a.) or 30 days (Section 1130.570.c.2)?

#### RESPONSE:

Reference:  
1130.544: Verification that a final cost report will be submitted to the Agency no later than **60 days** following the project completion date.  
1130.570: Where required under other Sections of this Part, a final cost report submitted to the State Board no later than **30 60 days** following the project completion date.

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The rules do not stipulate which deadline takes precedence if more than one is applicable.

An amendment is proposed to restore the original time frame for submission of a final cost report as reported in the existing Subsection 1130.570

#### Rule Number/Title: **1130.550b) - PROCESSING OF AN APPLICATION FOR EXEMPTION**

##### COMMENTATOR/ORGANIZATION:

Jacob M. Axel/Axel & Assoc

##### COMMENTS:

Provides for a 30-day completeness review (3X as long as for an Application for Permit). 15-day completeness review is sufficient

##### RESPONSE:

Suggestion to change the requirement will be referred to future rule development efforts.

#### Rule Number/Title: **1130.560b) - ACTION BY THE STATE BOARD (COES)**

##### COMMENTATOR/ORGANIZATION:

Jacob M. Axel/Axel & Assoc

##### COMMENTS:

Subsection does not identify maximum time period between a COE being deemed complete, and State Board action; suggests a maximum period of 45 days.

##### RESPONSE:

No substantive changes to this existing rule were proposed.

#### Rule Number/Title: **1130.570 - VALIDITY OF AN EXEMPTION AND REPORTING REQUIREMENTS**

##### COMMENTATOR/ORGANIZATION:

##### COMMENTS:

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Delia M. Wozniak President DMW and Associates, Inc	1. For a COE for Change of Ownership, which date has precedence in determining the date of the ownership transaction?
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	2. Subsection (c)(3) requires exemption holders to submit final cost reports within 30 days. This is a reduction from the current 60 day requirement. The current 60 day requirement should be retained to allow applicants the time to process this paperwork, negotiate final costs with contractors when there are disputes, etc. Under these proposed rules, the exemption could be invalidated if the final cost report cannot be submitted on time.

#### RESPONSE:

1. Any of the actions outlined in Section 1130.570(b)2) are acceptable for determining the completion of a project, as well as determining the date of ownership transaction. (These actions include: a new license issued; or Medicare and/or Medicaid certification has been obtained; or a stock transfer has been accomplished; or the transfer of assets has occurred; or the merger or consolidation has been accomplished, whichever is applicable.)
2. Exemptions, by definition, do not involve large construction or complex components. Therefore, the 30-day requirement is appropriate for a streamlined process.

#### Rule Number/Title: **1130.610 - DURATION OF A REVIEW PERIOD AND TIME FRAMES**

#### COMMENTATOR/ORGANIZATION:

#### COMMENTS:

Terence P. Sullivan Illinois Council on Long Term Care  William Kempiners Illinois Health Care Association  Dennis Bozzi Life Services of Illinois	Suggest that substantive nursing home projects have a 60-day review period, since these projects are less complex and take less review time.
Ralph Weber VP, Community Outreach Northwestern Memorial Hospital	With regard to the proposed 120-day review cycle, Mr. Weber recommends that all concerned parties should continue to advocate for the proper funding for the Board, so that needed staff can be in place and keep the entire review process within the current 120-day process.
John R. Beberman	"The present practice of scheduling substantive projects for Board

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Director, Capital Budget and Control University of Chicago Hospital	consideration w/in the 120 day limit is helpful. Extending this to the next Board meeting following the expiration of the 120 <sup>th</sup> day period could add weeks to the process. We'd rather pay fees that enable a quicker turnaround rather than lengthen the process."
Philip L. Schaefer Southern Illinois Healthcare	The changes to the duration of the review period and the proposed time frames is of significant concern. By lengthening the review period, these changes have the potential to decrease access to needed services and also, further subject applications to the effects of inflation.
Kevin Rose/ Provena Health	A number of proposed changes will lengthen the review process, including: 10 business day completeness review; requiring that the project is to be reviewed at the next Bd. Mtg that is at least 10 business days following the completion of project review; etc.
Patricia Sweitzer for Edward Hospital	b)- Substantive and Non-Substantive Applications "The proposed Rule adds language that mandates Board review of an application at the next regularly scheduled Board meeting that is at least 10 business days following the completion of the IDPH review. This language has the potential to extend the time before initial Board review an additional 2 months or more, depending on the State Bd mtg schedule." The time period can be further extended if the applicant receives an Intent to Deny.
Margie Zeglen Director of Planning Palos Community Hospital	"We strongly object to extending the CON process by increasing the review cycle beyond 120 days. This in addition to the time associated with the proposed LOI, can result in a CON process from preparation to approval becoming a year-long process.
Ann Guild VP, Health Policy and Regulation Illinois Hospital Assn.	The commentator expressed concern regarding the revised review time frame, stating that a project could potentially be in the review process beyond the proposed 120-day period, depending upon the Board meeting schedule, or if the project is deferred or receives an Intent to Deny.  She suggests hiring more staff and/or simplifying the process, review criteria and amount of data required, to streamline the process. Other ways suggested to streamline the review process include eliminating the requirements for: Letter of Intent, proposed 30-day follow-ups on temporary reductions in services, formal modification of timing changes, and alteration approval for line items rather than for total costs.

#### RESPONSE:

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

The proposed revisions are in keeping with the requirements of the Act as follows:

1. The existing rule requires a 10-day completeness review, whereas the Act mandates a 10 *business* day completeness review. This existing rule was revised to be in compliance with the Act, and to provide necessary time to conduct preliminary data review of increasingly complex and multi-faceted applications. While the proposed rule increases the completeness review to its full extent per the Act, the actual length of time for such review averaged 22-28 days from 2003 through 2008, with average total project costs ranging from \$24,686,471 in 2003 to \$43,845,551 in 2005.
2. The existing rule includes the IDPH staff analysis and written findings, as well as the Board review/action within the 120-day time frame. This time schedule has been in place for decades and worked reasonably well when IDPH staff were reviewing simpler, lower cost projects, such as replacement radiology equipment and bed additions to an existing bed service. However, as referenced previously, substantive applications have become increasingly complex, multi-faceted and costly and require additional time to perform a thorough and careful analysis. With the existing time frame (120 days for staff and Board review/action, **the actual substantive review periods for years 2003 through YTD 2006 averaged 156 days. The range of average review time frames for this period was 113 to 169 days. The median range of review time periods was 104 days in 2003 to 148 days in 2005.**

Therefore, this rule has been revised to utilize the maximum time frame allowed in the Act. (The Act states that the IDPH review period must not exceed 120 days.) Per the Act, the Board's review and action follow the staff review period.

3. Applications that are well conceived and developed, with thorough information, including all data and descriptions, will proceed through the review process without delay. **The proposed time frames represent the maximum time frame for the review of an application that does not require the submission and review of additional material.** Those applications that lack sufficient information and/or contain unclear explanations will require additional time to review requested and supplemental information and evaluate the project's compliance with the Board's rules. The review period may also be extended if the application receives an Intent to Deny.
3. When maximum effort is expended in the preparation of the project and the subsequent application, **prior to the submission** of the application, the more timely the review. As such, prospective applicants are encouraged to meet with IDPH staff for technical assistance prior to submission of an application, to avoid extending the review period because of deferral and/or staff or Board requests for additional information.

The suggestion to simplify the process by eliminating various points in overall review and post permit processes will not accomplish the goal of providing enough staff time to make a difference in the review workload/staff ratio. **The review of projects, especially those with multiple facets and affecting a significant number of departments, requires thorough and careful examination of data concerning a wide variety of criteria, to fairly determine the extent to which the project is compliant with CON requirements.**

Hiring more staff will not necessarily resolve the challenges of reviewing increasingly complex applications. **The goal is to allow sufficient time for an accurate assessment of a project's compliance with the CON rules, not the speed in which the application can be approved.** Normally, an application for permit is reviewed by one reviewer. Additional staff would be helpful in addressing the volume of applications for review, but the length of time needed for each complex, multi-faceted project would not be affected by an increase in the number of staff.

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.620 - TECHNICAL ASSISTANCE, LETTER OF INTENT, CLASSIFICATION, COMPLETENESS REVIEW AND REVIEW PROCEDURES</b>	
<b>COMMENTATOR/ORGANIZATION:</b> Delia M. Wozniak President DMW and Associates, Inc.	<b>COMMENTS:</b> All private conversations intended to influence the outcome of a review, no matter when these conversations are held, should be made part of the public record.  “The purpose of the LOI should be to strengthen the planning process, not to set some arbitrary and ineffective restriction on secret conversations. Therefore, consider reducing the lead time from 90 days to 20 days. The LOI for Discontinuation should continue to be 90 days. Consider eliminating the LOI requirement for exemptions since the purpose of granting a COE is to streamline the process for eligible projects.”
John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	1)b) Letter of Intent – 90 days is too long; 30 days is reasonable. 2)e) Application Processing Fee – 30-day period deadline for fee payment is too short; 60 days is more reasonable.
Armand J. Andreoni Director, Department of Planning Loyola University Hospital	The re-introduction of the Letter of Intent has little value to the CON process, and adds 90 days to the process. This would be in conflict with the Board’s goal of streamlining the process.
Kathleen Pankau Staff Counsel Illinois Hospital Assn.	. “Adding a 90-day Letter of Intent requirement to the CON application process is unnecessary because ex parte communications about a forthcoming application should be prohibited no matter when they occur. If an ex parte communication regarding the substance of an upcoming hospital project does occur, simple disclosure can cure any appearance of influence or bias on the Planning Board’s decision. Further, courts require there be some evidence of prejudice or bias in reviewing an administrative agency’s decision because of a presumption that agencies function in an unbiased manner.”
Philip L. Schaefer Southern Illinois Healthcare	“Letter of Intent” time period is too long; and it does not clearly define the definitions for “impending” and “pending”. Time delays will add to the expense of the project. The proposed rules do not adequately clarify “ex parte communications” or “technical assistance”.

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Patricia Sweitzer for Edward Hospital	Time period for Letter of Intent is too long; reduce from 90 days to 30 days
Ann Guild VP, Health Policy and Regulation Illinois Hospital Assn.	<p>The commentator remarks on the need to provide clear definitions to distinguish between the terms “pending and “impending”, in relation to ex parte communications.</p> <p>She suggests that “a better approach would be to more clearly define “technical assistance” in order to clarify the staff’s ability to provide valued support and guidance to applicants.” Together with a revised definition of “technical assistance”, she recommends documentation and retention of communications between staff and the Board that concern an application. This documentation would be available to the applicant.</p>
Kevin Rose  Provena Health	The letter of intent process would add 90 days to the process applicants must follow to obtain approval of a project. Consider a shorter time period for the Letter of Intent process.
Terence P. Sullivan Illinois Council on Long Term Care  William Kempiners Illinois Health Care Association  Dennis Bozzi Life Services of Illinois	Views the proposed 90-day Letter of Intent time frame as an unnecessary delay for nursing home changes of ownership, since these projects are uncomplicated. Suggest differentiating the rule so that LTCs would submit an LOI 30 days prior to application submission. Other applicants would have the 90-day time frame.
Scott Powder VP, Strategic Planning and Growth Advocate Healthcare	States that the 90-day LOI will unnecessarily lengthen the review process. Recommends adding staff and better defining technical assistance, to improve the CON workflow.
Margie Zeglen Director of Planning Palos Community Hospital	<p>The commentator states that there is no objection to the extension of the completeness review” from 10 calendar days to 10 business days.</p> <p>She recommends that the timeframe associated with the LOI be decreased to at least 30 days prior to application submission. Further, the rules should clarify that the LOI becomes part of the public record at the same time the associated CON application becomes available for public information/access.</p>
Patricia Sweitzer for Edward Hospital	The amount of time allowed for an applicant to submit the balance of a substantive application fee should be increased to 45 days, since disbursement processes can be lengthy, particularly in large organizations, and particularly when the fee can be as

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

	much as \$100,000. The recommended 45 days is well w/in the review period mandated in the proposed rules.
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#### RESPONSE:

##### LOI:

Historically, the Board required prior notification to filing an application for CON in the form of a Letter of Intent (LOI). The purposes were to:

- Provide notice to the Board and community; and
- Permit the Department to anticipate workload and allocate staff appropriately.

The LOI was eliminated by rule revisions in the year 2000 when a year sunset provision was introduced into the statute.

The current Board believes that the original purposes of the LOI are still appropriate and necessary, AND that the LOI will serve as a date certain to define new statutory language pertaining to “impending” filing of an application. The time frame selected should be defined consistently with the statutory intent of the term “impending”.

The proposed LOI requirement provides a clear point in time for the beginning of the ex parte restrictions. The Letter of Intent does not impact the review time period since the review period starts after the submitted application has been deemed complete, following the expiration of the LOI time period. An LOI contains minimal, basic information concerning the proposed project, and can be submitted while the preparation of the application is in the process of being reviewed and finalized by the applicant.

An amendment is proposed to change the LOI time frame for CON applications from 90 days to 60 days for CON applications.

##### FEES:

The 30-day time frame has not been changed from existing rules.

The CON rules clearly state that a processing fee of a certain range will be required within the prescribed time frame. Further, the applicant is able to estimate the processing fee in advance and can arrange for the payment to be ready for submission within the 30-day time period (by communicating with the Chief Financial Officer of the applicant facility), once the actual fee balance is known.

To lengthen the time period for fee submission would also potentially lengthen the review period. The 30-day time frame was incorporated into the proposed rules in order to create a more timely and predictable review schedule, thereby reducing unnecessary delays in the process.



## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: **1130.635 - ADDITIONAL INFORMATION PROVIDED DURING THE REVIEW PERIOD**

#### COMMENTATOR/ORGANIZATION:

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Assn.

#### COMMENTS:

Suggests that subsection (d) that deals with ex parte communication be amended as follows to recognize provisions in these rules for technical assistance:

- d) Information submitted by the applicant or by any other person that is not requested information, that is not supplemental information, that is not information provided under the technical assistance provisions of the Act or these rules, or that is not public comment or public hearing information is ex parte and will not be considered in the review of the project.

#### RESPONSE:

Suggestion to change the language will be referred to future rule development efforts.

Rule Number/Title: **1130.650 - MODIFICATION OF AN APPLICATION**

#### COMMENTATOR/ORGANIZATION:

Patricia Sweitzer for Edward Hospital

#### COMMENTS:

The proposed rule should be eliminated. It changes “an *increase* in the categories of service” to “a *change* in the categories of service”. If an applicant, for whatever reason decides to redo the scope of of a project, the applicant should not be penalized by add’l public hearing requirements or the resulting extension of the review period.

#### RESPONSE:

The proposed rules were revised to afford the public an opportunity to comment on changes in categories of service which may be of community interest. Both proposed increases and decreases may be of interest to the public.

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.660 - APPROVAL OF AN APPLICATION</b>	
COMMENTATOR/ORGANIZATION:	COMMENTS:
John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	b) Conditional Approval – For permits issued with conditions, those conditions should pertain to specific rules.
Philip L. Schaefer  Southern Illinois Healthcare	Requirements of “conditional permits” must be refined. The applicant should have an opportunity to understand, discuss and negotiate the proposed conditions prior to agreeing to them. The rules should also provide an opportunity to return to the Board to alter or modify the conditions that were previously agreed to. There should be follow-up communication to the applicants on conditional permits and feedback provided to the applicants.
Ann Guild VP, Health Policy and Regulation Illinois Hospital Assn.	The commentator states the following objections concerning “conditional permits”: -There is no statutory authority; and -Conditioning a permit on certain changes is never mentioned as a possible response.  If the Board decides to codify a conditional permit process in regulation, certain requirements are suggested: -the conditions must be directly related to relevant review criteria; -the applicant should have an opportunity to negotiate the proposed conditions prior to acceptance of the terms; and -the rules should allow modification or alteration of a condition that was agreed upon prior to permit approval.
Margie Zeglen Director of Planning Palos Community Hospital	“We... feel it should be noted that the Planning Act does not authorize the Board to issue conditional permits.”

#### RESPONSE:

The conditional permit is meant to be used as an alternative for projects that fall short of meeting all of the requirements of the CON criteria and standards, and without the conditional permit option, would likely receive an Intent to Deny.

This rule pertains to the “approval of a permit”; this does not conflict with the proposed conditional permit option, since the issuance of a conditional permit includes within the record of an open meeting:

- a statement of the areas of weakness in the application;
- the specific concerns of the Board regarding the application, as is;
- a discussion of possible remedies to encourage the Board to approve the application, and issue a permit;
- a detailed description of the conditions and how they are going to be met; and
- the applicant’s acceptance of said condition(s).

## **IHFPB Responses to Public Comment**

### **PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)**

The applicant is always free to choose deferral of their application if they want more time to consider the conditions, or allow the Board to vote on their application without conditions. This may result in the receipt of an Intent to Deny, and require a return to the Board with an improved application.

To limit conditions to specific rules would not allow the Board to consider all of the information it is required to consider in the approval or denial of an application.

Rule Number/Title: **1130.670 - INTENT TO DENY AN APPLICATION**

**COMMENTATOR/ORGANIZATION:**

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Association

**COMMENTS:**

“Subsection (c)(3) reduces the amount of time an applicant has to submit supplemental information after an intent to deny from 60 to 30 days. If the supplemental information is extensive, requires significant data analysis, or relies on outside sources, 30 days may be insufficient. It does no harm to the IHFPB to allow the original 60 days for the applicant. No action will be required on its part until the information is submitted. And the IDPH will still have the current 60 days to review additional information. The applicant already has an incentive to submit additional information quickly since costs only continue to increase over time. I would recommend that the applicant be given the best opportunity to defend the proposed project.”

**RESPONSE:**

The health care industry continually requests reductions in the review time frames.

By the time the Board has reviewed a project and rendered its initial action, there have been many indications of any weaknesses in an application that might require additional attention, in order to receive Board approval. Any requested data would not be of an unexpected nature to the applicant.

The proposed 30-day requirement appears to be reasonable.

# IHFPB Responses to Public Comment

## PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.710 - VALIDITY OF PERMITS</b>	
COMMENTATOR/ORGANIZATION:	COMMENTS:
Jacob M. Axel/Axel & Assoc.	The subsection proposes that the “transfer, assignment or disposition of 10% or more of the stock or voting rights of a for-profit corporation ... invalidates the permit.” It is suggested that the % is too low and should be changed to 50% to be consistent with the change of ownership threshold.
Philip L. Schaefer  Southern Illinois Healthcare	Requirement for projects to be completed w/in 2-years following date of obligation is unrealistic given that major project completion often takes more than 24 months. Also, the requirement re: Board notification of a project’s completion w/in 30 days is not realistic, since all required information might not be available to project holders w/in this period of time
Andrea Rozran Principal Diversified Health Resources, Inc.	“This rule would restrict the period for construction, completion, and reporting on a project to 2 yrs.” “A 2 year period of time is unrealistic since construction of a large project is likely to take more than 24 mos., and construction of even smaller projects that are phased and include the modernization of vacated space most often exceed 24 mos.”
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	The requirement that all permits be completed within two years of obligation is unrealistic, particularly for larger construction projects. I would recommend going back to the original requirement that allows an applicant to set the completion date in the application.
<b>RESPONSE:</b>	
<p>No substantive changes to this existing rule were proposed.</p> <p>The proposed rule states:</p> <p>b) Projects must proceed with due diligence and must be concluded and have a <u>completion date (refer to Section 1130.140) that is no later than the completion date specified in the application for permit or two years from the date of obligation</u>, whichever is later be completed within the timetable for completion <del>specified in the "Application for Permit"</del>. All permits for projects that are not completed in the timeframes specified shall subject the permit holder to the sanctions and penalties provided in the Act and this Subpart, unless renewed by the State Board pursuant to Section 1130.740.</p> <p>Further, the Act contains a provision for projects that cannot obligate within the prescribed time frame. Per the Act, applicants can extend the obligation deadline by showing the Board they are proceeding with due diligence.</p> <p>The application form will be revised at a later date to conform to the amended rules.</p>	

# IHFPB Responses to Public Comment

## PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.720 - OBLIGATION</b>	
COMMENTATOR/ORGANIZATION:	COMMENTS:
Jacob M. Axel/Axel & Assoc	Obligation process has little meaning or value, since applicants fully realize that projects are to be completed in due process and for no more than the approved amount, and are monitored both through the actual progress report process and the final cost report.
John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	Recommend allowing 60 days rather than 30 days for reporting an obligation. "Signing contracts is a fairly bureaucratic process in hospitals, passing through many hands. Many days can elapse before the contract reaches the person who does CON reporting."
Andrea Rozran Principal Diversified Health Resources, Inc.	The revised definition of obligation may make it difficult for permit holders to maintain permits, especially those with projects of significant size. This is because the permit holder has only 18 months after the permit issuance to obligate 33% of the total project costs. This rule only provides one 90-day extension to the deadline. This is too short a period for larger projects
Ann Guild VP, Health Policy and Regulation Illinois Hospital Association	In addition to the comments already made regarding the definition of "obligation" in Section 1130.140, if a permit holder needs additional time to obligate, it may still be impossible to obligate at the new 33% level within the 90 day extension time that is allowed.
<b>RESPONSE:</b>	
<p>The "obligation" of an approved project is statutory and has been retained in the rules to provide an additional checkpoint in the monitoring process. Notification of obligation demonstrates a permit holder's serious commitment and continual progress toward timely project completion.</p> <p>The intent of the revised "obligation" definition was to provide a definitive meaning of the term, to replace the unclear existing definition. The proposed definition represents <b>the maximum point</b> for the term "obligation" ---"<b>up to</b> 33% of total project costs" ; one could obligate in four months of obligation, if you expend one dollar.</p> <p>Once the dollar expenditure/commitment exceeds 33% of the total project cost without Board notification of project obligation, or if the Board has not been notified of project obligation within the prescribed time frames (12 months or 18 months, depending upon project type), the permit holder must request an extension.</p> <p>Per the Act: <i>"The State Board may extend the obligation period upon a showing of good cause by the permit holder."</i></p>	

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Rule Number/Title: <b>1130.730 - EXTENSION OF THE OBLIGATION PERIOD</b>
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#### COMMENTATOR/ORGANIZATION:

Andrea Rozran  
Principal  
Diversified Health Resources, Inc.

#### COMMENTS:

The new definition of Obligation makes the single 90-day extension too short a period of time

Large construction projects, with multiple contracts may not be able to obligate a minimum of 33% within the 21-month period (18 months + a 90 day extension). If these projects cannot obligate within the proposed time frame, the permits will expire, even if they are proceeding with due diligence.

#### RESPONSE:

The intent of the revised "obligation" definition was to provide a definitive meaning of the term, to replace the existing definition. The proposed definition represents **the maximum point for the term "obligation"** - ("up to 33% of the total project costs"); one could obligate in four months of obligation, if you expend one dollar.

Per the Act:

. *"The State Board may extend the obligation period upon a showing of good cause by the permit holder."*

An amendment is proposed to change the one time extension of the obligation period from 90 days to one year.

Rule Number/Title: <b>1130.740 - RENEWAL OF A PERMIT</b>
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#### COMMENTATOR/ORGANIZATION:

Andrea Rozran  
Principal  
Diversified Health Resources, Inc.

#### COMMENTS:

Project completion is more than the date the construction is complete. It takes time to receive and pay all invoices and all contractor disagreements are resolved. The proposed time frame for project completion is arbitrary because it doesn't bear any resemblance to time frames for project execution and completion that are identified by the applicant in the CON application.

"Although it may appear a simple process to apply for and receive a permit renewal, the imposition of the requirement to obtain such an approval, when in fact the project is proceeding to completion in accordance with the schedule provided in the CON application, is onerous to the applicant."

# IHFPB Responses to Public Comment

## PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

	The term “project completion” is not defined in the rules.
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### RESPONSE:

The 30-day requirement for submission of final realized costs was included in the rules to improve timelines in the review process. Applicants have an opportunity to renew permit if they cannot meet the 30-day time frame.

The proposed rule provides an opportunity to expand the date of project completion, that was **specified in the application or 2 years after the date of obligation, whichever is later**, by allowing the permit holder to request (at least 45 days prior to the completion deadline) an extension of the completion date from the Board.

Rule Number/Title: <b>1130.750 - ALTERATION OF A PROJECT FOR WHICH A PERMIT HAS BEEN ISSUED</b>
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### COMMENTATOR/ORGANIZATION:

### COMMENTS:

Kevin Rose Strategic Planning Provena Health	Expresses support for the continued availability of the project alteration process and for the changes that have been proposed to streamline the alteration process. Also supports the new rules for supplemental permits as a means for addressing unforeseen cost increases, should they occur.
Ralph Weber VP, Community Outreach Northwestern Memorial Hospital	<p>Mr. Weber expressed appreciation of:</p> <ul style="list-style-type: none"> <li>-the proposed addition of “supplemental permits”, that allow certain components of large projects to be altered without resubmitting an otherwise sound application in its entirety.”</li> <li>-the elimination of the distinction between pre and post obligation projects, which simplifies the alteration process.</li> <li>-streamlining the process by allowing the Chairman to grant an alteration for certain projects, without Board action.</li> </ul> <p>Mr. Weber recommends that:</p> <ul style="list-style-type: none"> <li>-the process of the Chairman’s review not be limited to the first alteration request for projects that have a positive staff report; and</li> <li>- increases in line item costs (those cost components of an approved project), should not require an alteration as long as the project in its totality remains within the CON-approved budget.”</li> </ul>
John R. Beberman	a) Allowable Alterations –

## IHFPB Responses to Public Comment

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Director, Capital Budget and Control University of Chicago Hospital	Doesn't understand why a substantive design change, by itself, would require an alteration request. "This requirement should be deleted."
Andrea Rozran Principal Diversified Health Resources, Inc.	<p>The proposed rule requires State Board approval of projects that propose to decrease square footage by more than 5%. This would delay the implementation of the alteration and would likely result in higher construction costs.</p> <p>-----</p> <p>Allowable alterations are not defined.</p> <p>-----</p> <p>The proposed rule does not allow any alterations that would, independently require a CON permit or COE. This would make it impossible for some projects to undertake reasonable alterations during the course of implementing the permit. This restriction might increase the cost of worthy project changes because they would need to be delayed until a project was completed, and might result in more costly construction costs. ["Supplemental permits"]</p> <p>No time frame for the review of alteration requests. What is the process for alteration requests that must be reported to the Board, but do not require Board approval.</p> <p>Section f) should reflect that some alterations require only notice to the State Board.</p>

#### RESPONSE:

Both increases and decreases to square footage impact the project and require the same attention, since they impact the cost per square footage.

A substantive design change requires an alteration request, by virtue of it being a substantive (and not minor) change. Substantive changes incur changes in costs and may impact the nature of the area being altered, so that it no longer resembles the project as approved.

"Supplemental permits" and corresponding requirements are described in Section 1130.140-Definitions. "Supplemental permit" means an approved application for permit which may be used to augment or enhance an existing permit. The initial permit must be obligated, but not yet completed.

An amendment is proposed to further define and clarify the term "allowable alterations".



# IHFPB Responses to Public Comment

## PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

Section f) Alterations requiring only notice to the State Board are discussed under Subpart c):

c) Alterations Requiring Notice Only to the Board

1) any allowable change to the project that does not require an action of the State Board independently. This notification must occur within 30 days of the alteration occurrence.

Rule Number/Title: **1130.760 - ANNUAL PROGRESS REPORTS**

**COMMENTATOR/ORGANIZATION:**

**COMMENTS:**

John R. Beberman  
Director, Capital Budget and Control  
University of Chicago Hospital

a) The standards construction pay form G702 is useful in addressing % of construction work complete and the status of components, but the total cost reported in G702 will not match the total cost info the applicant must report for CON purposes. Some non-reviewable work may be included, and the form will not include items categorized as construction done outside the responsibility of the general contractor. “Perhaps this can be a suggested rather than required item of information.”

Andrea Rozran  
Principal  
Diversified Health Resources, Inc.

It is unclear how the project costs are to be reported on the Annual Progress Reports; since “itemized costs” are not defined and they are not to be itemized by use of funds. Does this mean that a breakdown of project costs is not required?  
Re: the G702 form, many applicants do not use this form; unclear what an acceptable equivalent would be; it may not be a sufficient reporting tool, as it is used for construction costs only and would not include other line item costs.

Margie Zeglen  
Director of Planning  
Palos Community Hospital

The inclusion of the AIA Form G702 is a redundant and unnecessary step as part of the annual progress report and project completion requirements. The AIA Form G702 is specific only to the construction component of any project and therefore does not reflect total project expenditures. Further, AIA Form G702 may not reflect actual construction costs pending final change orders.”

**RESPONSE:**

To be clarified...

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

J E F F !!!

<b>Rule Number/Title: 1130.770 - NOTICE OF PROJECT COMPLETION, FINAL REALIZED COSTS AND COST OVERRUNS</b>
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**COMMENTATOR/ORGANIZATION:**

**COMMENTS:**

John R. Beberman Director, Capital Budget and Control University of Chicago Hospital	The 30-day limit for reporting is too tight; 60 days would be more appropriate. c)1) Audited Financial Report- Very costly and time consuming... The Board has the authority to investigate whether projects are carried out“in accord with the permit.
Kevin Rose Strategic Planning Provena Health	It would be helpful to clarify the definition of what would be considered an acceptable “audited financial report”. Does it need to be prepared by an independent third party or can it be prepared by an internal certified public accountant or internal audit dept.?
Armand J. Andreoni Director, Department of Planning Loyola University Hospital	The requirement for an audited financial report seems to be unnecessary, since it would be duplicative of the certification of project costs by the applicant, would add costs to the project by hiring an outside firm to review and issue a report, and would add several more weeks after a project’s costs have been finalized.
Philip L. Schaefer Southern Illinois Healthcare	The requirement of a financial audit of the completed project within 30 days after the project’s conclusion is unrealistic, since final costs and related sources of funding would not be available within the proposed time frame.
Delia M. Wozniak President DMW and Associates, Inc.	This Section stipulates that a report of final realized project costs for Modernization projects must be sent within 30 days of project conclusion. Yet, Section 1130.140 defines project completion as the date the Board receives a report of final realized costs . Please clarify.
Margie Zeglen Director of Planning Palos Community Hospital	“The provision that the Planning Board must be notified within 30 days of a project’s conclusion may require information that is not available to the applicant in this short a time frame.”
Andrea Rozran	“Project conclusion” is not defined. Need definition of “a detailed itemization of project costs and sources of

## IHFPB Responses to Public Comment

### PROPOSED RULES: Amendments to Part 1130 (and Repeal of Parts 1140, 1180 and 1190)

<p>Principal Diversified Health Resources, Inc.</p>	<p>funds”; it is unclear how this info should be reported.</p> <p>Since project conclusion is not defined, it is unfair to require a report of the project’s conclusion 30 days after said conclusion.</p> <p>The proposed rule changes a completion date for conditional permits from the date on which the “Final Report” is received, to a date which the State Board determines that the project is complete.</p> <p>This new procedure for determining a completion date eliminates a permit holder’s ability to control its compliance with the requirement of completing a project by a specified “completion date”. The permit holder will have no way to anticipate whether a project will be declared complete w/in the required time limit.</p>
<p>Ann Guild VP, Health Policy and Regulation Illinois Hospital Assn.</p>	<p>The major concerns with this section are that 30 days may be too soon after project completion to provide final notification to the Planning Board, that the AIA form G702 causes difficulties and may not even include all relevant project costs, and that audited financials add unnecessary costs. They may also take more than 30 days to complete.</p> <p>Finally, new language indicates that a project is not complete until the HFPB determines that it is complete. Does this require a Board vote? Is this necessary? The concern is that this requirement may in fact further shorten the time frames for completion, which could be set arbitrarily, and which could lead to additional administrative steps for permit holders who are trying to maintain valid permits through completion.</p>

#### RESPONSE:

Time frame for “final cost report” to be reconsidered.

Capital threshold for requirement of “audited” cost report to be reconsidered in terms of cost burden to project/applicant.  
The audit can be prepared by a CPA, including one that is an employee of the applicant. There is no need to hire an outside auditor.

“Project conclusion” and “project completion” share the same meaning. See Section 1130.140 for the definition of “completion or project completion”.

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Rule Number/Title: **1130.780 - REVOCATION OF A PERMIT**

**COMMENTATOR/ORGANIZATION:**

Ann Guild  
VP, Health Policy and Regulation  
Illinois Hospital Assn.

**COMMENTS:**

At a minimum, this section needs substantial clarification if it is to be modified as proposed. The greatest concern is the new language that states that permits shall be revoked for specified reasons. The current language states that “revocation proceedings shall be initiated ‘. I believe that the original language is more consistent with the Agency’s intent, than the proposed language.”

**RESPONSE:**

Compliance with the Act and the CON rules is extremely important to the Board. In order to maintain compliance, this rule gives the Board discretion to revoke permits if necessary, but does not mandate that the Board must proceed with this action. The Board can choose to forego its application of this Section upon

**MARK???**

The Board will send a “Notice of Allegation of Non-Compliance” (a written notification of allegations) to alert the permit holder of the concerns of the Board. The permit holder has an opportunity submit written response to the Board to explain circumstances or refute allegations. The Board will consider whether (or not) there is any basis for revocation of the permit and provide an opportunity for the permit holder to appear before the State Board.

Rule Number/Title: **1130.790 - PENALTIES, FINES AND SANCTIONS MANDATED IN THE ILLINOIS HEALTH FACILITIES PLANNING ACT FOR NON-COMPLIANCE WITH THE ACT AND THE HFPB RULES**

**COMMENTATOR/ORGANIZATION:**

Ann Guild

**COMMENTS:**

A new penalty has been added to this section such that the HFPB has a basis

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VP, Health Policy and Regulation Illinois Hospital Assn.	<p>for deferring consideration of matters before it if there has been non-compliance and the individual or entity has been notified about an allegation of noncompliance. Ms. Guild's comments on permit revocation apply here also.</p> <p>Particularly as the staff has become more aggressive in its compliance activities, this new penalty causes greater concern. The rule should clearly state that the Board may decide not to defer, and that the applicant has a role in the decision process regarding a potential deferral. An allegation may be in error, the matter may be minor, and the proposed project may really make a difference to the community. Hospitals will always try to resolve non-compliance matters and often bring them to the attention of the staff in an effort to resolve matters quickly.</p>
Patricia Sweitzer for Edward Hospital	<p>Section e) has been added to state that the Board will not act upon any matters of an applicant who has any outstanding compliance issues. This section should be eliminated because negotiations leading to a final resolution of compliance issues can take a long period of time. If an applicant is acting in good faith, there is no reason to defer unrelated matters before the Board. Secondly, unsubstantiated allegations of non-compliance made by 3<sup>rd</sup> parties could unfairly lengthen the time before the Board issues a permit and a project can commence.</p>
Kevin Rose/Provena Health	<p>Consider deletion of the subject rules. Mr. Rose states that the requirement for an applicant to settle any outstanding compliance allegations raised by the State Board, prior to any further consideration or action on new applications for permit or exemption, is unfair to health systems that own or operate multiple health care facilities. Per this rule, any outstanding compliance matter at any one facility w/in the system would hold up State Board action on the applications of all other facilities w/in the health system throughout the State.</p>

#### RESPONSE:

The new language is necessary for compliance enforcement reasons.

Rule Number/Title: **1130.950 - PROVISION FOR AND TYPES OF WRITTEN COMMENTS**

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<b>COMMENTATOR/ORGANIZATION:</b>	<b>COMMENTS:</b>
Delia M. Wozniak President DMW and Associates, Inc.	Need clarification of distinction between the written comments allowed in Sections 1130.920.a.4. and 1130.950, and the written comments disallowed in Section 1130.670.c.4.
<b>RESPONSE:</b>	